

Illinois law requires that all overcollections of tax must either be turned over to the Department or refunded to the customer. See, 35 ILCS 120/2-40. (This is a GIL).

October 25, 2002

Dear Xxxxx:

This letter is in response to an Attorney General referral dated July 17, 2002 in response to your consumer complaint. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your complaint, you have stated and made inquiry as follows:

I understand that sales tax is not to be collected on magazines. I have purchased the same publication in the CITY since the late 1970s and have never been charged sales tax before.

The practice should be stopped, unless it meets legal guidelines and is permissible.

You are correct that sales of magazines are not subject to tax. While sellers of books, sheet music, and phonograph records incur Retailers' Occupation Tax liability when they sell those items to purchasers for use or consumption and not for resale, sales of newspapers and magazines are not subject to tax. See the enclosed copy of 86 Ill. Adm. Code 130.2105.

In making the determination as to whether a publication qualifies as a magazine for purposes of exemption from Retailers' Occupation Tax, there is one test that must be met and several other factors that will be considered. To qualify as a magazine, the publication must be published periodically; it must be published at least 2 times per year. It must also possess at least one characteristic of a magazine. The additional characteristics to be considered would include whether the publication can be subscribed to, whether it contains articles of items of general interest, whether it contains general advertising, and whether it has the format of a magazine such as a soft cover, individual pages, and indexed articles. See also, Moody's Investors Service, Inc. v. The Department of Revenue, 101 Ill.2d 291 (1984)

Illinois law requires that all overcollections of tax must either be turned over to the Department or refunded to the customer. See, 35 ILCS 120/2-40. Furthermore, when overcollection of sales tax in Illinois is determined to be intentional, each offense constitutes a Class 4 felony. See, 35 ILCS 120/13.

We have referred your complaint to Department's Audit Selection Division. In the meantime, please show this letter to the retailer in question when purchasing magazines from its establishment.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.